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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KRYSTA TREMKO,)	CASE NO.: 2:24-cv-01703-JCM-MDC
)	
Plaintiff,)	
)	
vs.)	<u>DISCOVERY PLAN AND</u>
)	<u>SCHEDULING ORDER</u>
LIFE INSURANCE COMPANY OF)	
NORTH AMERICA, as Claims)	(Special Scheduling Review
Administrator for the Capital One Financial)	Requested)
Corporation Long-Term Disability Plan,)	
)	
Defendant.)	
)	

Plaintiff KRYSTA TREMKO and Defendant LIFE INSURANCE COMPANY OF NORTH AMERICA ("LINA") jointly request special scheduling review and submit the following discovery plan and order for this case.

I. Rule 26(f) Conference.

In accordance with Fed. R. Civ. P. 26(f), a telephonic conference was held on November 22, 2024 between Julie A. Mersch, counsel for the Plaintiff, and Kristina N. Holmstrom, counsel for LINA. The parties agree that the standard discovery plan is not best suited for this lawsuit, for the reasons set forth below. The parties further certify, pursuant to LR 26-1(b)(7-8), that they have met and conferred regarding the possibility of using alternate dispute-resolution processes. The provisions of LR 26-1(b)(9) do not apply as no jury trial is demanded or allowed in this matter.

1 **II. Nature of Case and Purpose of Special Review.**

2 The Plaintiff's complaint alleges a claim under the Employee Retirement Income
3 Security Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA"), seeking, *inter alia*, payment of
4 past long-term disability benefits denied by LINA and approval of ongoing benefits. This
5 action is brought pursuant to § 502(a)(1)(B) of ERISA (29 U.S.C. §§ 1132 (a)(1)(B)) for
6 wrongful denial of benefits.

7 No discovery plan and scheduling order is generally required for review of an
8 administrative record. LR 16-1(c)(1). An action for an administrative review usually requires
9 that the parties file a briefing schedule. LR 16-1(c). Accordingly, the parties jointly request
10 that this Court review and adopt the proposed non-standard discovery and case schedule set
11 forth below:

12 **III. Proposed Plan**

13 The parties have conferred and agree as follows:

14 **A. Production of the Administrative Record:** Defendant will disclose a
15 copy of the ERISA administrative record by **Friday, January 10, 2025.**

16 **B. Meet and Confer Period:** Plaintiff contends that she is entitled to conduct
17 discovery in this matter. Defendant does not concede that discovery is appropriate or
18 permissible under the facts of this case.

19 Accordingly, Plaintiff and Defendant will meet and confer by **Friday, February 7,**
20 **2025** as to 1) the type of discovery and scope of discovery that Plaintiff contends is
21 permissible and should be conducted, with reasonable specificity (including proposed written
22 discovery where possible); and 2) whether the parties agree regarding the contents of the
23 Administrative Record, including whether materials should be added and/or removed
24 therefrom. Any discovery that the parties agree is permissible ERISA discovery shall be
25 served by **Friday, February 21, 2025.**

26 **C. Briefing re: ERISA Discovery Disputes:** To the extent that, after the meet

1 and confer period, the parties disagree as to 1) the permissible scope of discovery and type of
 2 discovery and/or 2) the contents of the Administrative Record, on or before **Friday,**
 3 **February 28, 2025,** the parties will file a Stipulation Regarding Discovery Dispute in
 4 compliance with the Court's Standing Order.

5 **D. Filing of ERISA Administrative Record and Briefing of the Merits of the**
 6 **Case:** If no discovery dispute statement is filed under Paragraph III.C., above, on or before
 7 **Friday, February 28, 2025,** Defendant will file the Administrative Record with this Court,
 8 the contents of which will be agreed upon by the parties. The parties jointly request to file
 9 the administrative record under seal. It is over 1,000 pages long and contains personal
 10 identifiers on most pages. Redacting the record would be prohibitively time-consuming and
 11 expensive. Additionally, the administrative record contains Plaintiff's sensitive medical
 12 records.

13 If a joint Administrative Record is timely filed and simultaneous motions are not filed
 14 under Paragraph III.C., above, Plaintiff's Rule 52 and/or Rule 56 Motion shall be filed by
 15 **Friday, April 11, 2025.** Defendant's response will be due by **Friday, May 23, 2025,** and
 16 Plaintiff's reply memoranda will be due by **Monday, June 9, 2025.**

17 If motion(s) are filed under Paragraph III.C., above, the deadlines set forth in
 18 this Paragraph III.D. will be suspended. The parties will propose new deadlines after any
 19 discovery motion has been ruled upon, to take into account any additional discovery time
 20 permitted.

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1 **IV. Settlement.**

2 The parties discussed settlement and are currently engaging in settlement discussions.

3 DATED: December 19, 2024 LAW OFFICE OF JULIE A. MERSCH

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5 By: /s/ Julie A. Mersch
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9 DATED: December 19, 2024 OGLETREE, DEAKINS, NASH,
10 SMOAK & STEWART, P.C.

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16 **IT IS SO ORDERED:**

17 Dated this 20th day of December, 2024.

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19 UNITED STATES MAGISTRATE JUDGE
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